

## **REMARKS / ARGUMENTS**

### **I. General Remarks and Disposition of the Claims**

Please consider the application in view of the following remarks. Applicant thanks the Examiner for the careful consideration of this application including the references that Applicant has submitted in this case.

At the time of the Office Action, claims 1-59 were pending in this application. Of these, claims 18-59 were indicated as withdrawn. Claims 1-17 were rejected in the Office Action. By this paper, claims 1, 8, 10, and 17 have been amended, claim 9 has been canceled, and claims 60-63 have been added. Support for new claims 60-63 can be found in the specification at least at paragraph [032]. These amendments are supported by the specification as filed. All the amendments are made in a good faith effort to advance the prosecution on the merits of this case. It should not be assumed that the amendments made herein were made for reasons related to patentability. Applicant respectfully requests that the above amendments be entered and further requests reconsideration in light of the amendments and remarks contained herein.

### **II. Remarks Regarding Rejections Under 35 U.S.C. § 102**

Claims 1-17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,913,643 to Dejaiffe (hereinafter "*Dejaiffe*"). Applicant respectfully disagrees. Applicant respectfully submits that the cited reference does not disclose each and every limitation of claims 1 and 10, as required to anticipate these claims under 35 U.S.C. § 102(e). See MPEP § 2131.

In particular, with respect to independent claims 1 and 10, *Dejaiffe* fails to disclose particulates that have "a substantially spherical shape, wherein the at least one void communicates between a point inside of the particulate, and a surface of the particulate and an environment surrounding the particulate" as required by independent claim 1 or "a substantially spherical shape, wherein at least one of the plurality of internal voids communicates between a point inside of the particulate, and a surface of the particulate and an environment surrounding the particulate" as required by independent claim 10. In particular, the Examiner has continually stated that the process steps disclosed in *Dejaiffe* and Applicant's disclosure inherently produce

particulates that are substantially spherical. See e.g., Examiner's Answer at 4. Further, the Examiner cites *Dejaiffe* at col. 5, ll. 8-10 and 21-23 as disclosing a particulate comprising a void communicating between the interior and exterior of the particulate. The cited portions of *Dejaiffe* only describe an aggregate having a "closed surface" and not an aggregate having a void communicating between a point inside of the particulate, and a surface of the particulate and an environment surrounding the particulate. The only section of *Dejaiffe* that describes "open cells" states:

Close celled lightweight aggregates with open structure at the surface consisting of broken cells can be formed by crushing the large lightweight aggregates. Alternatively, close celled lightweight aggregates with open structure at the surface consisting of broken cells may be formed by spreading the glass and foaming agent on a sheet, heating the mixture, and breaking the resultant foam glass product up into desired aggregate sizes.

*Dejaiffe*, col. 5, ll. 24. Under the Examiner's reasoning, the particulate would start out spherical and would then be crushed. The crushing of a particulate that is inherently a sphere would not likely result in a particulate having a substantially spherical shape. "Unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations *arranged or combined in the same way as recited in the claim*, it cannot be said to prove prior invention of the thing claimed, and, thus, cannot anticipate under 35 U.S.C. § 102." *Net Money/IN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008) (emphasis added). Thus, the aggregate having broken cells and the process of forming the aggregate having broken cells disclosed in *Dejaiffe* would not have created, explicitly or inherently, a particulate having a substantially spherical shape with a void communicating between a point inside of the particulate, and a surface of the particulate and an environment surrounding the particulate. As such, the cited reference does not disclose each and every limitation of this claim and cannot be used to anticipate the claim under 35 U.S.C. § 102.

Therefore, Applicant respectfully asserts that independent claims 1 and 10 and their dependent claims 2-8 and 11-17 are not anticipated by *Dejaiffe*. Accordingly, Applicant respectfully requests withdrawal of this rejection with respect to claims 1-8 and 10-17.

### **III. No Waiver**

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art.

### **SUMMARY**

In light of the above amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections. Applicant further submits that the application is now in condition for allowance, and earnestly solicits timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicant hereby petitions for a Request for Continued Examination (RCE) and authorizes via the Office's electronic filing system the Commissioner to debit the Deposit Account of McDermott Will & Emery, Deposit Account No. 500417, Order Number 086108.0226, in the amount of \$810.00 under 37 C.F.R. 1.17(e) for the Request for Continued Examination fee. Applicant believes that no other fees are due in association with the filing of this response. Should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicant respectfully requests that the Commissioner accept this as a Petition Therefore, and direct that any additional fees be charged to McDermott Will & Emery's Deposit Account No. 500417, Order Number 086108-0226.

Respectfully submitted,

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